IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPEALLATE JURISDICTION

APPEAL FROM ORDER NO.285 OF 2002

Jayesh Dhanesh Goragandhi ... Appellant
(Ori.Plaintiff)

V/s.

The Municipal Corporation of
Greater Mumbai ... Respondents
(Ori.Defendants)

Mr. J.J. Shah, Advocate for the Appellant.

Ms. Geeta Jogalekar, Advocate for Respondents.

CORAM: A.S.OKA,J.
DATE : 4TH APRIL 2005.

ORAL JUDGEMENT :-

1. Heard Advocates appearing for the parties. The challenge in this Appeal from Order is to be order dated 11th March 2002 by which learnedTiral Judge declined to grant any ad-interim relief in favour of the plaintiff. The Appellant-plaintiff filed a suit in the City Civil Court at Mumbai against the Respondent for challenging notice dated 4th February 2002 issued by the Respondent under Section 314 of the Mumbai Municipal Corporation Act 1888 (herein refer to the said act of 1888). The

notice was served on 4th March 2002. The notice relates to a compound wall described in paragraph No.1 of the plaint.

2. The learned Advocate appearing for the Appellant submitted that the Trial Court has not given any reasons for rejecting the prayer for ad-interim relief. He submitted that the notice was served on 4th March 2002 and immediately on 5th March 2002, a reply was submitted to the notice by the Advocate for the Appellant. He has pointed out relevant averments made in the plaint to that effect. He has produced office copy of the said reply which bears the rubber stamp and acknowledgement of the Respondent - Corporation and it shows that the said reply was received by the Respondent on 5th March 2002. In view of the law laid down by this Court as reply was given to notice on the next day after the service of notice, the concerned Officer of the Respondent - Corporation ought to have passed an order after considering the reply.

3. The learned Counsel appearing for the Respondents after arguing the Appeal for some time on instructions of the concerned Officer, stated that in view of the law laid down by this Court, the Assistant Municipal

Commissioner will consider the reply dated 5th March 2002 and will pass an appropriate order within a period of 6 weeks from today.

4. In view of this statements the learned Advocate for the Appellant stated that in case the order is adverse to the Appellant-plaintiff effect may not be given to the said order for a reasonable time to enable the Appellant is challenge the same. He submitted that as the Respondent has agreed to pass a reasoned order, even the suit will not survive and in case the order is adverse to the Appellant, he may be permitted to file a fresh suit.

5. In view of this, I pass the following order :-

(i) The concerned Assistant Municipal Commissioner of the Respondent - Corporation will pass appropriate order on notice dated 4th February 2002 after considering reply dated 5th March 2002 submitted by the Appellant through his Advocate.

(ii) The Assistant Commissioner will pass the order within a period of 6 weeks from today and shall communicate said order as expeditiously as possible to

the Appellant at the address of the Appellant mentioned in the cause title of this Appeal.

(iii) In case the order passed by the Assistant Commissioner is adverse to the Appellant, the same shall not be given effect for a period of 6 weeks from the date of communication of the said order to the Appellant. The Appellant will be free to challenge such adverse order by filing appropriate proceedings in accordance with law.

(iv) All the contentions of the parties on merits are expressly kept open.

(v) In view of the aforesaid order nothing survives in the suit and the same is disposed of in terms of the above order. The Trial Court will pass a formal order in the suit on production of authenticated copy of this order.

(vi) Appeal is disposed of as above with no order as to costs. The parties to act upon this authenticated copy.

Judge